

The opinion in support of the decision being entered today was **not** written
for publication and is **not** binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**



Ex parte ROGER P. WILLEMS

Appeal No. 2006-0679
Application No. 09/997,934

ON BRIEF

Before FRANKFORT, CRAWFORD, and BAHR, Administrative Patent Judges.

BAHR, Administrative Patent Judge.

DECISION ON APPEAL

Appellant originally appealed from the examiner's final rejection of claims 1-30. As indicated on page 4 of the answer (mailed April 20, 2004), the examiner has withdrawn the rejection of claims 13-29. Accordingly, only claims 1-12 and 30 are involved in this appeal.

We REVERSE and enter a new ground of rejection.

BACKGROUND

The appellant's invention relates to a sprung surface handle pivotably mounted on a base plate, the base plate provided with a raised handle-protecting part, or parts, between an edge or edges of the plate and an arm or arms of the handle to protect the handle from engagement with other objects (see present specification, page 1). A copy of the claims under appeal is set forth in the appendix to the appellant's brief.

Applied Prior Art

Koll	2,715,243	Aug. 16, 1955
Willems	5,797,635	Aug. 25, 1998

The Rejection

Claims 1-12 and 30 stand rejected under 35 U.S.C. § 103 as being unpatentable over Koll in view of Willems.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding this appeal, we make reference to the examiner's answer for the examiner's complete reasoning in support of the rejection and to the appellant's brief (filed January 15, 2004) for the appellant's arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied prior art, and to the respective positions articulated by the appellant and the examiner. As a consequence of our review, we make the following determinations.

We note, at the outset, an inconsistency in the examiner's decision, as articulated on page 4 of the answer, to withdraw the rejection of independent claim 29 as being unpatentable over Koll in view of Willems and to maintain the like rejection of claim 30, which depends from claim 29. This inconsistency is of no real consequence in our decision as, for the following reasons, we have determined that the rejection of the examiner cannot be sustained with respect to any of the claims.

Each of appellant's claims 1-12 and 30 recites a sprung surface handle comprising, *inter alia*, a base plate having an edge, a handle and a raised handle protecting part, on said base plate, between an edge of the base plate and at least one arm of the handle (or between an edge of the base plate and the handle, as in claim 30). Claims 1-12 additionally recite a handle-mounting plate on the base plate. The examiner considers Koll's bracket plate 5 to respond to the handle-mounting plate recited in claims 1-12 and has determined that Koll lacks the mounting plate mounting the handle to a base plate and the base plate having raised handle-protecting parts. The examiner somehow finds suggestion to modify Koll to provide these lacking

features in the teachings of Willems of providing a base plate (frame 40) with raised protecting parts (projecting parts 127, 128) for use with a latching element having a handle 66.

Willems discloses a latch for holding a pair of case parts together, the latch including a frame 40 having a dish 42 for mounting in a hole in one of the two case parts and a hasp 20 adapted for engaging a strike 16 mounted on the other case part. The hasp 20 has a first end mounted on one end of a slide 70 slidably mounted on the bracket 50 fixed to the dish 42 and has a second end provided with a catch 26 for engaging the strike 16. A bolt 30 is mounted on the slide to move up and down with the slide, can turn about a bolt axis 64 and has a handle 66 pivotally mounted thereto that enables turning of the bolt to move the hasp 20 until the catch 26 presses firmly down against the strike 16. The bolt 30 is moved in the opposite direction to raise the hasp 20 so that the hasp can pivot out of line with the strike 16. As disclosed in column 3, lines 17-28 of Willems,

[t]he dish perimeter 46 includes primarily the flat flange 48 especially at the middle top 122 and middle bottom 124, where the hasp lies in its use and and [sic] stowed positions. The perimeter also has six projecting parts 130 that help strengthen the dish perimeter and that also provide rounded bumps that keep objects away from the dish so they are less likely to engage other parts of the latch that could harm a person or another package. The projecting parts include four parts 127 at the four corners of the rectangular flange, and two vertically elongated projecting parts 128 at the laterally opposite sides of the flange. The projecting parts

project by more than twice the thickness T of the sheet metal.

Given the disparate structures and functions of Koll's handle assembly and Willems' latch, Willems would not appear to provide any suggestion to modify the Koll handle assembly to provide a base plate to which the bracket plate is mounted and to provide raised or projecting parts, such as projecting parts 127, 128 of Willems, on such base plate to keep objects away from Koll's handle, as the examiner contends on pages 4 and 5 of the answer.¹ From our perspective, the only suggestion for modifying Koll's handle assembly in this manner is found in the luxury of hindsight accorded one who first viewed appellant's disclosure. This, of course, is not a proper basis for a rejection. See In re Fritch, 972 F.2d 1260, 1266, 23 USPQ2d 1780, 1784 (Fed. Cir. 1992).

NEW GROUND OF REJECTION

Pursuant to our authority under 37 CFR § 41.50(b), we enter the following new ground of rejection.

Claims 29 and 30 are rejected under 35 U.S.C. § 102(b) as being anticipated by Koll.

¹ We presume this to be the "modification" referred to by the examiner on page 4 of the answer.

Unlike claims 1-12, claims 29 and 30 do not recite a handle-mounting plate on the base plate or any of the details of the handle. Koll discloses a handle assembly comprising a base plate (bracket plate 5) having edges, a handle (hand grasp 7) rotationally mounted on said base plate, a raised handle protecting part (stops 25, 26) on said base plate between the top edge thereof and said handle, when said handle is adjacent said base plate, and a spring 18 to bias said handle adjacent said base plate (see column 2, lines 6-10).

CONCLUSION

To summarize, the decision of the examiner to reject claims 1-12 and 30 is REVERSED and a new ground of rejection of claims 29 and 30 is entered pursuant to 37 CFR § 41.50(b).

This decision contains a new ground of rejection pursuant to 37 CFR § 41.50(b) (effective September 13, 2004, 69 Fed. Reg. 49960 (August 12, 2004), 1286 Off. Gaz. Pat. Office 21 (September 7, 2004)). 37 CFR § 41.50(b) provides "[a] new ground of rejection pursuant to this paragraph shall not be considered final for judicial review."

37 CFR § 41.50(b) also provides that the appellant, WITHIN TWO MONTHS FROM THE DATE OF THE DECISION, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of the appeal as to the rejected claims:

(2) Request rehearing. Request that the proceeding be reheard under 37 CFR § 41.52 by the Board upon the same record. . . .

REVERSED; 37 CFR § 41.50(b)

JENNIFER D. BAHR
Administrative Patent Judge

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